

To be read in conjunction with
the tabled evidence/statement



**HEARD BEFORE JUDGE D SHEPPARD (CHAIR), MR K PRIME,
DR J HARDING AND MRS J VERNON, MEMBERS OF THE BOARD**

MONDAY 13 2009

**HELD AT THE FULLWOOD ROOM, LEVEL 3, DUNEDIN CENTRE,
1 HARROP STREET, DUNEDIN**

HEARING RESUMED [10.30 am]

APPEARANCES

Mr F McRae, Otago Regional Council

Ms M Baker with Ms R Moynihan, Resource Management Law Association

Mr D MacTavish and Mrs A MacTavish, Lower Waitaki River Management
Association

Mr D MacTavish

Audio file: dpm0096

CHAIR: Good morning. You're Fraser McRae, is that right?

MR MCRAE: That's correct, yes.

CHAIR: And you're going to speak to us on behalf of the Regional Council.

MR MCRAE: Correct.

CHAIR: Thank you very much for coming and we're looking forward to what it is that you have to tell us in support of the submission.

MR MCRAE: Welcome to the city this morning, it's not always this chilly. I am here really just to speak to the submission that we've presented, the Council's endorsed that submission at a proper hearing, and really just to, very quickly, just fly through the essence of it, which is that the Council believe that the submission was very heavy in process and not in outcome. And so the consequence of that was that the leadership was not there from the National Policy Statement for outcome it was there about what you should do. The clear presumption being if you do the right thing, you get the right outcome. That's not necessarily a good assumption to make when dealing with Resource Management matters. You need to have a good outcome and a good target to work to, and it's a National Policy Statement, it should emphasise that point, or those points.

The Council saw the process as being particularly onerous and costly in terms of time and money, and the timelines unduly and unbelievably, unrealistic, in the context of working through a public process to

implement anything that may be in there. And just on that point, I suppose it's had an ongoing issue with these sort of statements, where there's an expectation that we will go through the public process, and achieve the outcome that was sought at the beginning of that process from the Crown which sort of suggests the public process is going to be gone through, so that we can tick that box, but we're not going to listen to it because we've already determined what we want. And if that's what we want then these statements should say, "This is what you will put in your plan without any further process, without going through that first schedule process."

Otherwise we're going to start from the same point, go through the public process, and if we're all going to end up at the same point again, then the presumption is a public process doesn't have any weight. And I think that a cynical way to work the processes. If the Crown wants certain things in our plans tell us to stick them in there, but don't make us go through the public process and then still come to the same conclusion, because our public anywhere around the country may well make us drive to a different outcome.

The other thing is that the Council, my Council, believes that we have some reasonably innovative ways of dealing with things and like to take slightly different tacts at times, to the way it resolves some of those issues and believes that the national process side of it may cut across some of those and constrain the opportunities for local innovation and local creativity to evolve. And in that context, things like allocating scarce water resources and dealing with non-point source discharges.

If there was something that the Council would like was that, we'd like some opportunity to be able to change consent conditions at times without the cost of that falling on the ratepayers. So at the moment, if we call a consent in, we the community pays. And it might well be for reasons that the community sorted out the outcomes that it desires. Yet just to line the

consents up with that community view, if we call it in, we have to pay the cost of that. Now I know someone is going to have to pay it somewhere, but at the moment that falls on the Council and the question is, should we have to do that?

Council is particularly concerned about the Tangata Whenua component of the National Policy Statement and the burden that that will place on the Council to operate at the hapu level. That's a level of concern to the Council because it's not well defined. It's not like dealing with the subcommittee of the committee in the Pakeha sense of the way we operate our society. Very, very difficult to find whanau and hapu, and Council believes that that is something which should be better defined by another agency before the Council has to interact at that level. Otherwise, we are on a mission, an impossible mission, really.

[9.40am]

Council is concerned about the suggestion of co-management as well. It's happy with consultation it's happy with recognising the role and responsibilities, and the special relationships that Māori have with resources, but it draws the line at co-management, and sees that as an opportunity for failure because of the inability to mesh the two together or to gain a unified and united response to issues, and the two can be manipulated and used to become the device if it's not well managed. And I suppose that's sort of a sum up of the Council's concerns.

CHAIR: Thank you very much. Now, what we'd like to do is just to take the opportunity to ask you one or two questions, just to be assured we are understanding your Council's position. Do you mind if we do that?

MR MCRAE: Nope, not all, I'll attempt to speak on behalf of my Council. I may choose to decline too but I'll certainly give it my best shot.

CHAIR: Well, we don't have any thumb screws on hand! Mrs Vernon, do you have any questions you'd like to ask?

MRS VERNON: Thank you, I've just got one relating to your 1.4, and also perhaps more specifically to your comment today that you see this National Policy Statement taking away the local initiative or innovation. I just wondered, could you explain to us some of the things that perhaps you are doing, that you see that this policy statement would stop you doing?

MR MCRAE: A little bit of background first. In Otago, the majority of the water - you may well know this anyway, the majority of the water which is allocated to irrigation has been allocated turn-of-the-century under the Warden's Court with mining privileges and with no, we'll say in environmental considerations, in those days. The consequence of that is that the resource itself is, in anybody's sense of the word, grossly over-allocated. And so, the risk of short supply of water is carried at the farm level. It's well understood and well managed in Otago, so that we're dealing with a high allocation of resource and the shortage is always shortage at the farm level. So that risk of not getting the water that they are located or able, theoretically, to get is carried at the farm. Whereas in other areas that we see around in New Zealand, generally the resource is still available for allocation, and so people are going close to the limit. So each consent that gets applied reduces the certainty of my getting the water that I want, whereas in Otago it's really just increasing the risk of not getting the water. And Council is seeing that as - that basically is a principle of difference where it allows us to manage the water as a total resource more efficiently, because you've got competition in a market that

tends to be operating where the allocation is not at the limit that everybody requires, but it is over that and so that anybody not taking their full allocation, that is taken up by somebody else, and so the resource itself is allocated to be used efficiently, and the totality of the resource, as opposed to some individual's consent to being used efficiently. So the over-allocation allows that.

Now that's not to justify the level of over-allocation that in Otago, that clearly suggests that we will be with the renewal of consent, particularly when 2021 comes around with the mining privileges and leading up to that. We have a process that we are just working through a plan change at the moment to allow us to claw back to the face value of the consents that are there, but there's really no intention of clawing that back to the level of the theoretical, allocatable volume. We will still be well over that level, but that will enable the resource itself to be used efficiently and the risks of short supply carried at the farm. The reverse of that is that if we operate to the volume that's there, then water won't be taking that could be taken, because the environmental concerns are addressed and there will be less water available to be taken and the consequence of that is that there'll be less available for the community to use for its social, economic wellbeing.

So there's a balance between, at the moment, sucking the river dry and not taking anything out and we're all dealing with something in the middle. Working through with the communities minimum flows for those rivers that we haven't got them at the moment and ensuring that all the values that the river provides, in-stream values, Tangata Whenua values, social, cultural, ethical values are all provided for and then allocating out the balance that's left. If you add up the face value of those consent's it's always going to be more than the theoretical volume that you are going to be taking.

MRS VERNON: So do you see this policy statement as being quite restrictive for where you're at, and you've obviously got some historical issues that focused on the plan.

MR MCRAE: Yes, Otago's got a slightly - historically we've got a different problem to the rest of the country, so I'd hate to see the rest of the country managed to solve our problems, but equally we would hate to see solving the rest of the country's problems ruin our opportunities.

MRS VERNON: Well it's interesting you raise the date 2021, because there have been some submissions, it was suggested that 2035 is actually too far out for this policy statement. And that, in fact, it is brought back to a date, whatever that might be, 15 years or whatever, but 2021, I take it all those mining licences, do they cease or, what happens in 2021?

MR MCRAE: My Council's got a terrible view that it's going to be a revolution. 2021, you're correct, the mining privileges cease. Up until the Resource Management Act they were enduring, eternal, gave priority up the river to water. So there was a relative priority between individual takers. So they had huge financial value and in some properties the water rights are worth more than the land, and the Resource Management Act gave them a set clause through to 2021, 30 years from enactment. And we've managed to fiddle our way through half of that, and suddenly it's looking very, very close. And both the farming community and the Council are starting to get concerned about life after mining privileges.

MRS VERNON: Thank you for that.

MR PRIME: Yes, thank you, sir. You said that you'd like to see Tangata Whenua and hapu defined by another agency. What sort of agency did you have in mind?

MR MCRAE: I suppose the most logical would be Te Puni Kōkiri or somebody. It's just very difficult dealing with Tangata Whenua groups, as from a Pakeha perspective, from a Council perspective, they tend to come and go. They don't have registered offices. They're not conventional in the sense that all of the other things that we deal with are clearly defined and identifiable and it becomes very difficult at times to work with those groups. Not with the individuals, once you've found them they are great. Don't get me wrong. It's finding who to talk to, that's the hard part. Having come from Waikato, before I came to work here, it's very difficult to maintain mailing lists. Just to keep track of who you talk to with each group is very difficult, and if that becomes, "We must control all of those groups and maintain the lists", that becomes a huge burden on Councils. Now, I haven't got an answer, I haven't come here with an answer to that, but it is a huge burden that Councils would somehow have to carry, and it's certainly nothing wrong with talking with people, they're fantastic to work with. It's just finding who to talk to and maintaining that relationship, I suppose.

[9.50am]

MR PRIME: Thank you, could you also elaborate on the difficulty your Council sees with the co-management suggestion?

MR MCRAE: We've got four papatipu runaka here, and there is some relationship, and that's Kai Tahu and there is some - there's a Kai Tahu Management Plan for the area, Resource Management Plan for the area. There is a southern group as well and Turere (ph) Ngaio (ph) Ngai Tahu

have recognised both the management plans for quite a large chunk of Otago. So we've got some major conflicts created internally inside Ngai Tahu.

MR PRIME: Within the management plans, you are saying?

MR MCRAE: Yeah.

MR PRIME: I see.

MR MCRAE: And so if we're going to get into co-management, we've then got two management plans that are different, over the same area, from different groups. But moving forward from that, the Council believes that co-management is, I'll say an erosion of their authority over the region as a whole for all the community. Now, I might be putting words in their mouths there, and I apologise if I have. But they certainly see it as their responsibility is for the whole community. And here's a part of that community getting a special seat.

MR PRIME: So there's four runanga that your Council work with

MR MCRAE: Yes, inside Otago.

MR PRIME: Count yourself lucky!

MR MCRAE: I worked the Waikato District with 35 marae, I don't know whether it's luck or not but certainly life's a lot easier, I'll say that.

MR PRIME: Thank you.

DR HARDING: Thank you for your submission. There is one or two points I'd like to try and delve a little bit deeper into. I'm still a little bit confused about the over-allocation situation that you were talking about. So one, we have a series of systems that are over-allocated, do they have an ecological minimum flows on them or?

MR MCRAE: Some of them have. Few have, most haven't. We're working through the process of plan changes to put those in.

DR HARDING: Okay, so for the moment you have a series of irrigators or whatever who are wanting to take water and they're in a system where it's over-allocated. So is it a first come, first serve basis?

MR MCRAE: The mining privilege system is yes. They're in chronological order, going through the Warden's Court door, back in 1890.

DR HARDING: Okay. So people at the bottom of the list literally could, during summer could get no water.

MR MCRAE: Correct.

DR HARDING: All right. Also, I was wondering about the - you made a comment in your submission about identifying Iwi and hapu values. So does the Regional Council not have things like the registry of Iwis or values or systems that really have some value to Māori.

MR MCRAE: Well, we've got their Resource Management Plan for Otago, and there's a regular meeting program with Kaitaka (inaudible) as well that takes place to - it's high level, it's the Chair and the Chief Executive with an individual and with runaka representatives, and they meet six weekly, and they address high level issues and matters that have come up that

are, shall we say, less than comfortable in the relationship, so they smooth the waters. We consult regularly, and I'm not sure if I've completely answered the question there. We don't have - inside the plan, our plans, the water plan, we don't have a list of matters of concern or of issue to Tangata Whenua.

DR HARDING: So if you were required to do that you would be starting from scratch?

MR MCRAE: From the RMA plan's perspective yes, we would. From the information that the Council's got and the relationship it's got, no, but from the concepts of the plan, yes we would.

DR HARDING: Do you have any view about how this Proposed NPS might actually allow some direction for adaptive management (inaudible) have that in the NPS. Do you have any idea how they might be incorporated?

MR MCRAE: Yes, the concept of reviewing consents, and it gets back to the cost of calling them in to review them. In issuing a consent for something there is a presumption that you'll have all the information on the table and make the decision the day you approve that consent, with all the conditions involved. So the opportunity to say, "Get it launched, let it settle, let's see what happens" and then "Lock it in" is taken away. So you end up with a very cumbersome, very detailed and costly hearing process for a major consent such as a wind farm, anything that's significant. Everything has to get made, as best you can, with that decision on the day you approve that consent. And it would be better if there was a mechanism whereby we could get it kicked off, because we are just dealing with everybody's supposition. All the experts, me included, are all saying, "I think this is what's going to happen."

Now, if we've got it wrong, it's an expensive exercise to get it right later on and it would be - if we could get it going within a frame and at a point in time, bring it back up so that it's not back up to tip it over, but we can bring it back up to say, "Right, there's too much noise" or something has happened. "There's too much traffic" or whatever, you can actually deal with the consequences in a better way once the thing's actually settled down and it's starting to do its thing, whatever it might be. Generate power, make smoke, do whatever. So that you haven't got all of that incredible amount of detail and speculation, and that's all it is really, on the table on the day you make the consent so really it's trying to be able to review the consent at some point in a reasonably major way. If all parties are accepting that that's part of the process of getting going, let's get this thing started and then we'll get the thing out of there and we'll tune it on race day, we'll really make it run.

CHAIR: One of the things they say, is they want longer terms, I'm talking about consent holders of course. And in a sense, what you're speaking about is intention with the consent holders for certainty for longer terms, which leaves me wondering whether the answer is to grant for shorter terms and that it gives a more complete, a more full control, isn't a popular word, but opportunity to review what's happened, than if you grant for long terms and have reviews because however much you build up the scope of the review, it's still review, it's not the same as what happens when a term has expired and somebody applies for a new grant?

MR MCRAE: That's correct.

CHAIR: So isn't the answer to have grants for shorter terms?

MR MCRAE: No, I don't think it is because the shorter term suggests - well for a start it's an expensive exercise because you're right out in the public arena

again. And there's the opportunity to decline all things being equal. And I don't think we're talking about that. We're talking about something that is accepted that it's needed, it's going to be there, and we're talking about reducing the impact that it might have. So that it's a way around giving some certainty to people, because people aren't going to invest a lot of money in something which - they're never going to build a wind farm with a five year consent. They would with a - given that you could do that, but they would with a long term consent or enduring consent and the opportunity to come and have a look at it in five years' time in relation to bird strikes or something or whatever. So that certain things we're concerned about and we haven't locked down that part of it. But yes you can get going, and - it's not probably the best example in the world I could think of.

[10.00 am]

CHAIR: That's all right. You're making yourself clear, thank you. One of the things that the Regional Council is saying is that the cost of that review, which is done for the benefit of the environment, oughtn't to fall on the ratepayers and my interest is, is it within the scope of an NPS to influence that or is that something that is really got to be dealt with by parliament?

MR MCRAE: No, I suspect you're correct there.

CHAIR: Okay. The Regional Council tells us about the lack of clear vision of the NPS and I say to myself well if the Regional Council feels that it isn't as clear as it ought to be where have they set out the amendment that they ask for?

MR MCRAE: We haven't done that sorry.

CHAIR: You haven't done that? Next question, you were telling us that the timeline is unrealistic. And you're talking about the 40 days for incorporation, aren't you?

MR MCRAE: Yes.

CHAIR: If the National Policy Statement had no time constraint on it at all, what would be the point in having the National Policy Statement?

MR MCRAE: I think you're correct there.

CHAIR: So that we've got to find some way in expressing, if not an urgency, at least an expedition, haven't we?

MR MCRAE: Definitely, yes.

CHAIR: What if it were to say something like - with words that expressed some kind of urgency. As soon as practically practicable, and then there was a cap?

MR MCRAE: I think that would be much more acceptable to the Council, yes.

CHAIR: And what would be a sensible cap? Because if there's no cap then (inaudible).

MR MCRAE: Yeah, well I would have thought somewhere around the two to three year mark on the basis that a very simple plan change, in my experience, takes 12 months.

CHAIR: Yes.

MR MCRAE: And these are not going to be necessarily simple plan changes through that process. So I would suspect you would need at least that amount to get through the consultation process, to get through the statutory side of the RMA process as well.

CHAIR: Thank you. Then the next important point that you make is the regional variety. And your explanation, I understand, is that that largely derives from the historical role of the mining privileges.

MR MCRAE: As far as water allocation goes that's correct.

CHAIR: And we know that they are going to expire in 12 years time. And you rightly say the Council is confronting the reality that something will have to be done for what happens when they expire. Will there be a need for the regional variety to continue after that or will that be the opportunity for the national policies to apply fully in Otago as well?

MR MCRAE: I use the mining privilege example as an example of the regional diversity. I think that some of the regions are water poor, some of them are water rich, and some of them like Otago have part of the region that is rainfall water rich, and part of it that is reasonably okay. But central Otago, there is a lot of water in central Otago, but the countryside looks like a desert. And it's a completely different regime to manage that resource in its totality then perhaps, I'll suggest, Hawke's Bay or West Coast. So I think that there is still going to be regional diversity irrespective of the history that we've got here at the moment and the way that - that diversity will be in the way that the resources are seen, valued and then used and wanted to be looked after by various communities. So I think the opportunity for that diversity needs to remain.

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CHAIR: And it needs to be clear in any National Policy Statement, doesn't it, because even if we ignore Otago for a moment, it's got to cope with Gisborne as well as Auckland.

MR MCRAE: Absolutely.

CHAIR: Thank you very much Mr McRae. We do appreciate your willingness to assist us further with our questions.

MR MCRAE: I just hope I haven't put the Council in a misrepresentation.

CHAIR: We'd be grateful if you could take that to your people our thanks for your presentation this morning.

MR MCRAE: Certainly. Thank you.

ADJOURNED

[10.06 am]

Audio file: dpm0097

RESUMED [10.31am]

CHAIR: Good morning, welcome. Very pleased to have your attendance to speak in support of the submission for the Resource Management Law Association.

MS BAKER: Thank you sir. I haven't repeated the submission. I'm assuming you've got the actual submission handy because I cross-refer to it, I didn't want to copy it unnecessarily. My name's Maree Baker and I'm with my colleague Ruby Moynihan and I guess I'll just take it from the top but feel free to interrupt with questions or I see you've generally been leaving questions till the end with most of the presentations.

CHAIR: Yes, we feel that people should have the opportunity to say their piece first.

MS BAKER: All right, paragraph 1: as you are aware this submission is on behalf of the Resource Management Law Association of New Zealand and RMLA's object is to promote within New Zealand an understanding of resource management law and its implementation in a multi-disciplinary framework, excellence in resource management policy and practice, and resource management processes which are legally sound, effective and efficient and which produce high quality environmental outcomes. So my position is I'm the convener of the RMLA's special interest group on freshwater, and I'm also on the National Executive.

The RMLA's submission on the proposed NPS on Freshwater Management tries to focus on the second and third objectives set out above. It sets out to try to make constructive comments with the aim of

ensuring the NPS becomes an example of excellence in resource management policy and practice, and becomes an instrument that is legally sound, effective, efficient and likely to produce high quality environmental outcomes.

When looking at the soundness of the NPS, the focus is on whether or not it clearly identifies matters of national significance relevant to achieving the purpose of the Act, and whether or not it's likely to assist in our interpretation of matters relevant to achieving the purpose of the Act. The submission tries to avoid taking policy positions on specific issues or objectives, but rather looks at whether the proposed NPS clearly identifies objectives, outcomes and targets and contains related provisions setting out required courses of actions to meet those objectives. In other words, whether or not the NPS contains mechanisms that will ensure it will actually be effective. The main reason the RMLA doesn't take an actual policy position on the substantive issues is, as you might be aware, we represent a wide range of members. I can't remember the exact number, but of the over 1,000 members. We've got representatives ranging from industry all the way through to conservation groups. So one assumes there's not going to be an easy consensus on a lot of the substantive merit-based issues, so that's why we stay away from those.

So this presentation will summarise the key points made in the written submission looking at the following: Firstly, the provisions supported by the RMLA, secondly the provisions in the NPS that are ambiguous or don't provide sufficient guidance, thirdly provisions in the NPS that require amendment in order to be effective, and fourthly just some queries that the NPS raises in my mind at least.

So starting with the positive things, provisions the RMLA supports. In a general sense, the RMLA supports Objective 2, as it attempts to set a

clear target of integrated management. However, RMLA suggest rewording of the objective to remove the phrases that duplicate the sort of “how to” provisions that come from Policy 1(j) and instead try to expand on the higher-level explanation of what the objective sets out to achieve.

The RMLA also supports Objective 7, regarding the efficient use of water. However, submits that this objective could be more effective in achieving efficiency if it set down that efficiency of use must also be considered when allocating water, not just when managing the end use of water. The suggested changes to give effect to this are also contained in the submission.

Objective 9 requires effective monitoring and reporting from regional councils which is clearly necessary and supported.

The definitions of consumptive use, environmental flows and water levels, and freshwater quality standards are supported, as is Policy 1(i) 2 & 3.

Policy Four is supported but the submission notes that there is some duplication.

Moving on to the provisions that we found to be ambiguous and unclear, Objective 3 uses terms that result in a lack of clarity as to its true intent. It's unclear what is meant by the progressive enhancement of the overall quality of freshwater resources. So the actual target that this objective is setting is not explicit. Objective 4 has problems arising from inconsistencies between the values listed in Objective 4 and the definition of “notable values” which are referred to in a similar context at the policy level. The definition of “notable values” contains a more explicit list of values than those listed for specific management targets in Objective 4. To remedy this inconsistency, the submission suggests amendments.

The definition of “freshwater resources” specifically excludes the femoral streams which is inconsistent with the definition of “water body” in the RMA. There is no justification provided for this inconsistency and the reason for it is not clear, and the RMLA objects to this inconsistency.

The definition of “degraded freshwater resources” is circular and does not contain specific thresholds that assist in our understanding of what is actually to be considered to be “degraded” in accordance with the definition. The RMLA therefore suggests amendments to the definition to clarify and make more certain its meaning. However, the specific threshold of what classifies as “degraded” is a policy position that is not appropriate for the RMLA to make a statement on. So this part of the definition has been left for the Board and the Minister to set a quantifiable target.

The definition of “notable values” is inconsistent with similar terms in Part 2 and potentially inconsistent with the concept of “outstanding characteristics and features of water bodies” in Part 9 of the Act, which is the part of the Act that relates to water conservation orders. Therefore, the NPS definition potentially sets up a third category of outstanding or nationally-important features and characteristics, subject to a different test and emphasis than is already given in Part 2 and Part 9. Related to this is the definition about “outstanding freshwater resources” which again uses the same or similar terminology as in Part 2 and Part 9 of the Act, but does not define it specifically. Instead, as with degraded freshwater resources, it is defined in a circular fashion, leaving us none the wiser as to what classifies as outstanding in this context. The result of that is that you could actually have three different tests under the Act for outstanding matters relating to water bodies. You’ve got nationally-important matters under section 6, you’ve got nationally-outstanding matters under Part 9 of

the Act for water conservation orders, and then potentially there's a third type of nationally-significant or nationally-outstanding matter that classifies as a notable value under the NPS. I don't think having those three types of things with different definitions is going to be helpful. So the submission is that there should be more clarity and more consistency between the NPS and those two parts of the Act, so it's clear where the NPS sits in relation to the section 6 matters and those Part 9 matters. Policy 2(c)(i) and 5(b) both refer to the use of industry good practice. However, there is no definition and no guidance and this term is, it is submitted, open to a range of interpretations. The overlap of functions between regional and district councils, arising from Policy 3 is queried. The allowable degree of overlap is a grey area, and it is submitted that the Board needs to carefully consider how broad an application of section 31.1 can sensibly be applied.

Turning now to provisions that the RMLA consider likely to be ineffective, or at least not as effective as they could be. The RMLA questions the value of Objective 1, as it effectively only repeats the wording from section 5. Having that wording in the NPS does not assist us in our ability to interpret or apply Part 2 of the Act, as it is identical to the wording in the key provision defining "sustainable management".

[10.40am]

Similarly, Objective 6 as proposed adds little to our understanding of how to apply Part 2 of the Act. The RMLA's submission suggests amendments to provide additional guidance that does add to our understanding of how to apply the Act, in terms of how to prioritise or choose between demands for different uses. In a general sense, the RMLA supports Objective 5 as it clearly states it is a matter of national significance to halt the degradation of freshwater resources. However, it needs to be considered whether or not the further degradation of freshwater resources can be achieved if only

new activities are managed pursuant to that objective and not existing activities also. Related to this point is the definition of “land use development”. The RMLA submits that if the intention is to create an NPS which will have the best success of improving water quality, then it needs to have the ability to review existing activities, specifically discharge activities associated with existing land uses but are having an adverse effect, not just new activities.

Similarly, the definition of “degraded freshwater resources” should include reference to existing land use activities and therefore their associated discharges and use of water, as should Policy 1(h).

Policy 2(c)(ii) will be more effective if it is able to be applied at the regional council’s discretion to existing uses as well as new consumptive uses. There are objectives and policies that risk being ineffective because of the absence of timeframes within which the specified objective or policy outcome is to be achieved. The RMLA submits that for the NPS to be most effective, more timeframes and realistic deadlines should be set. Provisions where this is identified as an issue are set out below: Firstly, Objective 3 which requires the progressive enhancement of the overall quality of freshwater resources, including ensuring appropriate freshwater resources reach or exceed the swimmable standard. Also, there is no deadline by when regional councils must have notified freshwater quality standards and environmental flows and levels. Policy 1(c) could, but does not, require that changes to the RPSs and regional plans be undertaken contemporaneously, which would speed up the process. In Policy 2(a) there is no deadline by when freshwater quality standards and flows be imposed. Policy 2(c) sets the timeframe for notification of regional plan changes, however there is no direct link to Policy 1 matters, so no strict necessity for the proposed sequential arrangement. Policy 9 requires there be an independent review no later than 10 years after it comes into

force. It is submitted that, along with the tightening up of timeframes sought above, this timeframe could also be shortened.

It is noted that there is no use made in the NPS of section 55 (2)2(ab) directing that specific provisions be included in RPSs and plans. This reduces the potential effectiveness of the proposed NPS.

Policy 1(i) requires guidance be given to regional and district plans but only refers to land use developments and discharges of contaminants, and not explicitly to consumptive uses. It is submitted that for completeness, even though in a sense there is some overlap, that consumptive uses needs to be referred to here explicitly also.

Policy 1(j) provides guidance as to how land use development should be sequenced, but does not provide guidance as to when it might be that land use development per se is inappropriate. No guidance is given on the ultimate question of whether or not consent should be granted.

Policy 2(c)(iii) sets three types of conditions for discharge permits. However, only the first of these seems appropriate as a condition, and the other two are either inappropriate or so broad as to not be of any assistance when imposing specific conditions.

Policy 3(b) imposes similar requirements for district councils and Policy 6 contains similar related provisions.

Finally, just some queries arising. For the NPS to be most effective, it will need to fit with related statutory instruments. Most relevant at this point in time is the draft National Environmental Standard on Ecological Flows. The draft NES and the proposed NPS have a degree of overlap and commonality and therefore it is submitted that if practicable the Board

should be provided with a progress report from the Ministry as to where the NES is at, and if it is not possible to consider the NES in its final form prior to giving your recommendations to the Minister, I suggest that your recommendations have a caveat that any final form of an NPS will need to be reviewed in light of any final NES on ecological flows.

Objective 8 states the Tangata Whenua values are to be identified and reflected, and the RMLA queries how this differs to recognise and protect, which is the target for life supporting capacity and simply queries whether this difference in tests and thresholds is justified and intended.

Policy 1(g) requires the RPS guide and direct regional plans for actions at times of low flows. However, this does not seem to add anything to the powers already explicitly conferred by section 329 as set out in the RMLA's submission, except for the fact that the policy does refer to the sustaining of notable values. So I am simply querying the wording of that policy there, the necessity for it.

Policies 1 and 2 do not address permitted discharges. The RMLA submits that the NPS could greatly assist in the interpretation of the implementation of section 71, which specifies the thresholds that must be achieved for a discharge to be permitted by a rule. The thresholds in section 71 are uncertain and open to debate, which is an undesirable situation when you are setting permitted activity rules. The NPS is an appropriate instrument to reduce this uncertainty.

CHAIR: Thank you very much. I think my colleagues may have some questions for you, so if you agree with that, we would like to proceed to that now.

MS BAKER: Yes, that's fine.

MRS VERNON: Thank you first of all for your submission and also for giving some alternatives and I understand the position that the RMLA sits in, but it has been a useful guidance. I've actually worked more off your original submission, so just to be clear where I'm coming from, page 19, paragraph 62, and you do mention it in today's submission as well, I just want to explore a bit further with you where the RMLA - and you may have some thoughts and you may not be able to comment, and I will respect that. In the NPS you say you want more detail for the decision-making on the long-term effects, so are you looking at things like talking about cumulative effects, or are you talking about ecological values, environmental flows? I was just wondering what more detail has the RMLA got at the back of their mind?

MS BAKER: Yes, it is most specifically cumulative effects on in-stream values or in water body values, ecological values – notable values if you use the NPS phrase.

MRS VERNON: Thank you. I know you've mentioned the NES, but if that surfaces in the meantime between now while we're doing our work, I guess you'd be looking that there would be some correlation or consistency between the two?

MS BAKER: Yes, definitely. I mean, just from the basics such as defined terms and making sure there is consistency of use and definition, to making sure the mechanics of it line up, that there's, you know, if the NES imposes these set agreed methods for determining ecological flows, that there is corresponding policy to ensure implementation of those as well. And potentially if the NES doesn't set timeframes for the imposition of ecological flows, the NPS could pick up from that and implement it.

MRS VERNON: On page 21 you talk about addressing - or there is an issue about how do we address current practice, and it is raised in your submission, I wonder, and you mightn't be able to add to it, but are there some thoughts by the RMLA how the NPS might be able to incorporate?

MS BAKER: Well, just for existing activities that do involve discharges or takes, there's the potential for the NPS to require eventually regional plans to impose water quality conditions or flows and water body levels, but then the regional council has the discretion to then review those consents. So ultimately, I think that is it still up to the regional council to use the powers in section 128 to review those consents, but the NPS could at least get them to the point where they've got that ability to exercise that discretion. Alternatively, if - and I guess some of those discharges and consents will be possibly permitted activities, which I haven't managed to think through properly, but where they are subject to resource consents, there's definitely that ability I think.

[10.50am]

MRS VERNON: Just bringing you a little bit back to the cumulative effects, do you think that - and the document only talks about discharge and it isn't defined in the definition, there are some submissions who are saying that it actually should be more specific about whether it's both point source and non-point source discharges. Has the RMLA got any opinion about that?

MS BAKER: Well only to the extent that it's not just point source discharges that contribute to the cumulative degradation of water quality.

MRS VERNON: That's why I asked that question, yeah.

MS BAKER: So yeah, so to that extent if you want it to be as effective as possible it would have to be able to regulate non-point source discharges as well.

MRS VERNON: Thank you.

MR PRIME: Thank you. Just regarding Objective 8, I guess I'm not familiar - very familiar with the subtleties of the difference between the identified and reflected, I thought that was rather good wording. Do you have a better wording or stronger wording that -

MS BAKER: See I haven't decided either whether or not it's good or bad wording, I was just intrigued by the fact that they used different wording between identify and reflect and the other one, something other and protect. And it was just really I wanted to raise it, so it was specifically considered by the Board.

MR PRIME: Oh yes.

MS BAKER: So that you were comfortable that if there is going to be "identify and reflect" for tangata whenua values not "recognise and protect" that that provided sufficient level of protection and recognition and everything. Because you know, one way to look at it is that if you haven't got the word protect in there then maybe that isn't a high enough threshold or objective level so maybe "identify, reflect and protect". I just think the absence of the word "protect" just raised an alarm bell with me that's all.

CHAIR: Could it be that it's responding to a difference in the nature of the values that are the subject of concern. If you think of section 6 for instance "recognise and provide", those values there are relatively tangible, I say relatively. Whereas the values that we're speaking about now are relatively intangible and they'll exist whether an NPS protects them or not, they're beyond protection in their metaphysical nature.

MS BAKER: Right.

CHAIR: So that in fact this may be perhaps too subtly, but it may be a recognition of a difference in nature between the kind of values that section 6 seeks to protect and the sort of values that are addressed here?

MS BAKER: Yeah, that might be - and there was just - I guess there was no explanation in the section 32 report as to why there was a difference in wording, so I really just wanted to flag it and what you say sir does make sense and could be - could very well be the explanation.

CHAIR: Thank you.

MR PRIME: No that's fine thank you.

CHAIR: In two or three places you bring our attention to terms that are used that seem to be a bit vague or elusive and you're suggesting that maybe they deserve more precise definition. And I'm keeping in mind that the instrument that we're concerned with is a high level national policy. Do you think that it's acceptable at that level to have terms used in the general and broad way that might be applied in different regions, perhaps slightly differently according to the circumstances of the region?

MS BAKER: Definitely in some circumstances that's appropriate because there are differences or from catchment to catchment even that mean there won't be a one size fits all for everything. But I still think in other instances this instrument could provide more guidance and less - not require every regional council to reinterpret and reinvent the wheel to implement it, so to I guess remove some of the work that the regional councils are going to have to do when they come to implement this and instead hand them some thing's that are ready to be adopted in their plan.

CHAIR: Well we were hearing earlier this morning about a regional council which was seeking to protect its own variety or diversity or flexibility in the way it does things.

MS BAKER: Yeah.

CHAIR: And I imagine there may be other regions who have similar approaches and would resent being told that they have to change?

MS BAKER: I'm sure there are some and I mean, as you're aware, there's a whole range of performance between regions and some - the regions that sort of –

CHAIR: Has a sense of (inaudible)

MS BAKER: Yeah I mean the Otago region, they've had a water plan, I think they might have had the first water plan in the country you know, they've grasped managing water by the throat and run with it and they've done a great job, whereas other regions haven't, they've only just started getting to grips with the fact that they might need to write a water plan. So yeah, so there's definitely that's a real issue and I don't know what the answer is to that.

CHAIR: In your paragraph 18 for instance you're asking us to think about the terms "industry good practice" you were saying it was open to a range of interpretations. Would that problem be reduced if it's with "industry best practice"?

MS BAKER: I think that would reduce the debate that would ensue when a specific council tried to implement the phrase yeah.

CHAIR: But obviously at least in marginal cases there needs to be some evidence about what the industry good practice is, but it's a term that's chosen, I imagine, to allow for improvements over the years or decades. In other words, the industry good practice in 1999 may not be acceptable in 2009 and the 2009 practice may not be acceptable in 2021 which seems to be a significant year.

MS BAKER: Yeah, I'm not sure what I'm - I don't want to pick on any industry, so I'm only using this because it's the first one that came to mind, not because I'm picking on them. Dairy farming, you know, is a industry best practice to fence every stream and have riparian planting or is that good - I'm not sure what box that would fit into, I would have actually assumed that was best practice not just good practice. So there's I guess, it might be useful and you'll probably hear from industries saying this is our good practice maybe, this is our best practice, I don't know. And to get an idea as to whether or not the phrase good practice is going to be sufficient to achieve the desired objective.

CHAIR: Now when you're speaking about policy 1(j) you were saying that the policy does not provide guidance as (inaudible) land use development is inappropriate. Is it guidance that it doesn't provide, I would have thought it provided guidance, but I accept that it doesn't tell you how any particular application has to be decided. And you can't expect that, can you?

[11am]

MS BAKER: I guess it's the assumption that it proceeds on it, it seems to be proceeding on the assumption that land use development simply needs to be managed not that in some instances that management will actually mean in certain circumstances land use development is inappropriate if the objectives of the NPS are to be achieved. So I guess it was that sort of underlying assumption -

CHAIR: But if consents are required, that's exactly what the outcome may be?

MS BAKER: Yeah.

CHAIR: Consent's required, sometimes it will be refused.

MS BAKER: Declined, yeah. I think – yeah, the point was is there enough guidance as to when that - the values that might cause a council to decline a consent in those?

CHAIR: What I'm asking to understand better is how that could be possible. We have, as our ultimate test, is the purpose of the Act set at the high order, it maybe that these are more fully met by granting or by refusing consent. Then we have the purpose of the Act elaborated in section 5.2 and the rest of Part 2. You can't possibly in a policy give a clear indication about what land use development cannot every be allowed and what land use development must always be allowed.

MS BAKER: No, that's right.

CHAIR: That's why you have decision makers.

MS BAKER: Yes, yes but I guess – yeah, you're right, turning that on its head I was more so thinking of it from the point of view of what level of effects to the water body are so inappropriate as to trigger, you know?

CHAIR: Isn't the outcome the same, each has to be decided in the whole range of circumstances and amongst other circumstances, as well as the effects on the water body, might be community needs for whatever it is that's the land use.

MS BAKER: Yeah. But could the NPS say that in certain circumstances achieving water quality of swimmable standard, for example, is a trump card or should it go that far by saying that's the line that you can't cross, or should it not, I guess that's what we're discussing, isn't it?

CHAIR: I don't think any such, even if you look at the section 6 factors, they don't trump all circumstances universally it's just that the judgment has to be made --

MS BAKER: Yeah, we can never get away from that can we?

CHAIR: -- in all of the circumstances. Well are we wanting to get away from it in a National Policy Statement? You may say that we want to change the whole basis of the Act, but that's not for a Board of Inquiry.

MS BAKER: No, I'm not suggesting that. No, I do see your point it's – yeah, possibly gone too far on that issue.

CHAIR: Now there was something you said at the top of page 7 that wasn't quite as clear to me as I wanted it to be just as you were presenting. Would you mind coming back to the last sentence of your paragraph 23? Now, can you just explain to me again if you wouldn't mind, how a policy of a National Policy Statement might be able to be applied to existing uses?

MS BAKER: It would be a trickle down approach. A policy could require regional plans to impose or offset water quality targets and water flow and level targets. And once those targets are in the plan, existing resource consents for discharges or for water takes could be reviewed pursuant to section 128 to consider whether or not they need to be brought in line with those targets.

CHAIR: Now the relationship with the NPS with the draft NES you're suggesting that any final form of the NPS might be reviewable in the light of the final NES. That would be to get the NES a higher place in the hierarchy of instruments than the NPS wouldn't it?

MS BAKER: Oh I didn't - that was an unintentional - I didn't intend to put it higher than the NPS, I'm just aware that there's no requirement for the NES to go through a hearing, so it conceivably could come to its final form without there being another opportunity for input or public review. So, because it's a way being progressed behind not closed doors, but not in this sort of forum, that this Board is in a position where it makes recommendations to the Minister on the final form of the NPS, that that recommendation at

least needs to flag that the NES is also slowly being progressed itself and that the two documents need to somehow match if they're to be effective.

CHAIR: Well I'm not persuaded that it needs to flag it, no doubt the Minister or the Minister's advisors would be aware of the possibility of any consistency between the two. That policy is none of the business of this Board. This Board's task is confined to the NPS. If somebody else fails to manage another instrument in a way that leads inconsistency, that's not something that this Board can take responsibility for, can it?

MS BAKER: Only to the extent that the - it is relevant that there is an NES on ecological flows in the pipeline.

CHAIR: Well I don't think we're even officially aware of that.

MS BAKER: As a –

CHAIR: We've only got one task and that is to look at the NPS and listen to your submissions about this document.

MS BAKER: As a Board of Inquiry do you have the ability to require or inquire into issues that are raised that do seem relevant on the face of it?

CHAIR: Only if it's related to the NPS.

MS BAKER: Oh I guess my submission is that the NES and its potential effect does relate to the NPS, because it deals with the imposition of flows on water bodies which the NPS does as well. I guess that's as far as I can take it.

CHAIR: I reckon it doesn't. But if you're concerned about this potential inconsistency, the appropriate destination for your concern is not this Board, but with the Minister or the Ministers advisors.

MS BAKER: That's true also, yeah.

CHAIR: Now finally, and I'm sorry if I've taken some of your time with questions, but finally I'd like to ask you briefly about this reference to section 70 (1). And you're saying there's uncertainty and debate about the meaning of section 70?

MS BAKER: Yes

CHAIR: Understood. My question is, is it right to say the NPS is an appropriate instrument to reduce the (inaudible)? Can an NPS provide certainty where parliament has chosen not to give it?

MS BAKER: I think it could. I mean that's one of the purposes of an NPS is to assist in our interpretation of the Act.

CHAIR: Or is it to assist in the applications?

MS BAKER: Yes it's to do that, also.

CHAIR: So if you come back to the RELA's submission, for which we thank you and we're particularly grateful. Have you put in there a proposal for the content of the NPS that might address the application of section 70 subsection 1.

MS BAKER: No I didn't feel able to do that, because that would be again making a policy, you know, setting quantifiable targets that are – it's not the place for the RMLA to say what is the quantifiable target for water quality that prevents significant adverse effect on aquatic life, or what is the quantifiable target that renders water unsuitable for stock.

CHAIR: I understand that. But you'll understand that we are limited to the relief sought by submitters. Well, thank you both for coming and we're very grateful to you for that.

ADJOURNED [11.11am]

Audio file: dpm0098

RESUMED [11.55am]

CHAIR: Well good morning. Thank you very much for coming in. We are looking forward to your presentation. Thank you very much for bringing further notes. Which of you is going to present?

MR MACTAVISH: I'm going to, Your Honour.

CHAIR: If you would please Mr MacTavish.

MR MACTAVISH: Yes, thank you. The first thing I would like to say, sir, is Mr Bill Penno is the Chairman of the Lower Waitaki River Management Society and he sends his apologies. I was coming down anyway for my submission and so he rang me up and said, "Would I present?" He has got business on the farm. He sends his apologies.

CHAIR: That is entirely satisfactory to us.

MR MACTAVISH: Yes. And I'd like to say I dragged my wife in to sit next to me because you people looked so formidable!. The submission of the Society was essentially that we have been through the process of a large application for water in the Lower Waitaki and we thought that it might be of interest to the Board some of our experience; you sir, will no doubt remember the development of the management plan for the area and so Alison has been involved with me with the appeal, so she actually knows more about the planning. I sort of looked at the impact side of things and she did a lot of the relating that to the plans. So if you've got any questions and like any good wife she will butt in and tell me when I'm

going off and kick me under the table when I'm going off somewhere where I shouldn't go.

Just to start then. What we've done is just prepare a summary really of the points that we thought might be of interest. I made a longer list and the feeling was that it would be better to try and make it more generic and just pull out certain major points. So this is by no means an exhaustive list of course of all the things that came out in the hearings, but some of the more points we think maybe helpful to the Board.

So essentially in the primary submission, the main point was that; this is point 1, if this National Policy Statement is to have any significant impact on changing the sudden deterioration in quality and life-supporting capacity of New Zealand's freshwater bodies, then the Society's feeling was that it would need to be worded more cogently and powerfully than existing statutory documents. We were really encouraged by the plan that you developed, sir, with your Board for the Waitaki. We were delighted that it aligned very much with this - seemed very much to align very much with this document that we've given you, which was developed by our Society and the page really to look at is page 3 which has the Mission Statement of our Society, and the Goals and Objectives. Essentially Goal 1 is broad, sort of logistical type issues, money raising and so forth. Goal 2 is about sustaining the quality of the environment, enhancing and protecting it. And Goal 3 is about recreation and access and those sorts of issues.

So, we were sort of developing that at much the same time as the plan was being developed. And, as I say, we were very encouraged that we thought our objectives aligned and then we were rather disturbed when we felt that the application for the North Bank Tunnel didn't seem to take them

into account as much as we'd hoped. So we thought there might be something there of interest.

So just going on then, do I need to say anything more about that particular case for the other members of the Board or should I just go on?

CHAIR: Well I think you should bear in mind that none of my colleagues was involved in that particular enterprise.

MR MACTAVISH: Yes.

CHAIR: You and I shared different parts. And so you should just take a moment perhaps to explain what significant - well you started to do that, but explain to my colleagues what is significant in terms of the National Policy Statement that we've now got to see if we should make improvements.

MR MACTAVISH: Yes. Do you think you can do that well?

MRS MACTAVISH: I don't know if I can do it well but I can give it a go. The Waitaki Resource Allocation Plan is a unique document because it sought to make a catchment inventory, I understand, of the resources we had in the catchment and the in-stream values. And this was done in order to be proactive to avoid over-allocating the water in the catchment as has been done in other catchments because there are strong competing interests in the waters of the Waitaki by national interests. It's a very highly prized catchment for hydroelectricity generation. It's important to Iwi and it's important also to irrigators. So there are lots of competing demands on the river and the river itself is a unique, big river; the only big river in quite a large area. Is that all right?

[12.05pm]

MR MACTAVISH: I'll just add that there is already eight hydro developments in the catchment. And this proposal, the North Bank Tunnel, is looking at developing another stretch, the last - well, there's 60 kilometres remaining of the river that's not got hydro development on it, and it's taking 30 kilometres of those, diverting two thirds of the flow of the river into a tunnel, leaving a third in a residual river and re-discharging the tunnel back into the river for the last 30 kilometres. So it was a non-complying application, which was the main issue for the group. The minimum flow was set at 150 cumecs and they wished to have a varying minimum flow between 150 and 110 over the year, rather than a minimum of 150.

The other thing to add is that there is another major application in the wings - well, it's actually been heard and we are waiting for a decision, which is the Hunters Down Irrigation Scheme. And they are applying to lower the minimum flow again from 110 down to 100. So there's this kind of salami effect, if you like.

So I think we've started talking about the inventory of resources in 6 there: the plan enabled an inventory of resources and values to be made, which we thought was really important. Then that inventory bulk allocated in order to avoid further stress in the community and establish, we hope, bottom lines. Essentially a non-complying application would grab more from one of the other allocations, in this case the environment, that already represented a compromise by the community in the development of the plan. If flows below the minimum provisions had been made prohibited it would have avoided re-litigation and great stress and demand on the community; or if alternation to the flow regime could only be done by a plan change. So we had sort of these two options.

7, the adoption of a widely accepted standard, we were keen on this idea. And we suggest the 80% of MELF (ph) recommended in the proposed National Environmental Standard on Ecological Flows and Water Levels, the discussion document of March 2008 as an absolute minimum.

The advent of didymo on the Lower Waitaki and elsewhere, or course, we felt, put further strain on the waters of the Waitaki and so extra flows need to be left in the river to deal with such contingencies.

There was quite a lot of discussion about the use of the IFIM method of establishing minimum flow regime and the use of habitat preference curves and the possible effect of the didymo on those habitat preference curves. All that work was done prior to didymo and there was quite a lot of discussion in the hearing on that.

MRS MACTAVISH: And if I could just butt in there, lagrosythim (ph) is already in the Waitaki catchment and that's another example of something which could establish in the Lower Waitaki. There again, there might need to be variability in flows to help control that. There are things we don't know and so we are keen on the precautionary principle.

MR MACTAVISH: Number 8, a concern for us as a group is the imbalance of power between economic activity and proponents of it, and the in-stream interests groups in deciding freshwater issues and the implications of those on sustainable outcomes. We are very aware that the cases that we have been involved in, there has always been this imbalance. And no matter how fair and good the plan is, if you have that kind of imbalance, you do get a kind of skewing effect, which is not easy to see a way around.

And that, with respect to this recent case, on North Bank Tunnel, we found it difficult to assemble the confidence to progress with an appeal. We found it difficult to assemble witnesses both because so many witnesses have already been tied up by the applicant, and also because they came from companies sometimes which had policies where if one person was employed, they weren't able to have someone else in the same company employed by some other group.

Then there were the whole funding issues. We were lucky enough to get funding from the Ministry for the Environment Legal Assistance Fund. And that made it possible for us to appeal this case. And then there's the whole business of assembling the presentations and organising the cross-examination, and the wear and tear on the community and all that is really quite demanding. So for a little group like ours we found it quite stressful and we are only just recovering actually. We finished last week.

Number 9, compromises. Currently it seems to us the mindset of people is still that their demand is more important, that "their" demand is more important than the environment, and that in the case of freshwater, any water running to the sea is wasted.

With the Waitaki, the squeeze was put on by the generator with a non-complying application. Irrigators then insisted on retaining their near a hundred percent reliability, so the only part of the river flow that could give was the environmental allocation.

Number 10, the explanations of the Board's intent in the Waitaki Regional Plan Annex as part of the plan, which we only read a little before the hearing, which we were delighted to find, we found really helpful Your Honour. So we would encourage that sort of supporting information

in any plan. It's very very helpful and it makes it accessible for the layperson.

One or two key issues we identified in our submission. And again, there's a lot more detail of course behind this; in fact, I have the whole submission document here. By Camilla Owen from Duncan Cotterill. But one or two important things we thought was the discussion around Objective 2, being consistent with Objective 1, exactly what that meant. And there are different submissions on that. If it is the Board's intention, then any priority ranking needs to be absolutely clear and even during the hearing there was a discussion with the Judge and counsel on different interpretations of rankings. Was that in the Act as well, or was it just in the plan?

MRS MACTAVISH: I think that discussion was about the plan and whether it was stronger than the Act or weaker.

MR MACTAVISH: Were you yourself, involved in something Your Honour in North Shore, he referred to a decision of yours I think. Anyway, sorry, perhaps I'm not meant to ask that.

CHAIR: Well you can ask. I am not confident that I would know which one the Judge was referring to. He himself has given a very important decision on the North Shore (inaudible) and it's possible he was referring to his one rather than mine.

MR MACTAVISH: Yes, there was considerable discussion; the weight between the enabling and sustaining provisions and RMA 2 and that whole area seems to be absolutely crucial.

[12.15pm]

Our observation is that endless enabling where minor only needs to be demonstrated usually by more resource proponents eventually leads to one thing which is total degradation.

We had experts arguing for example, that because we were now getting from time to time microbiological counts that exceed recreational standards in certain places in the Lower Waitaki, we may as well not try and contain further contamination. So you kind of get to this kind of threshold and then suddenly it doesn't matter anymore.

We think that environmental protection should be at least as strong as Part 2 and preferentially stronger. So, in any plan that is working in with the RMA, we'd like to see it essentially clearer and stronger in protecting the environment. The ideas of whole of catchment and connectedness in the Waitaki regional plan, we found very important and close to the mauri, the concept of mauri which itself is very integrating, we found it ecologically sound idea. It reflects also the life supporting capacity of the objectives of the Waitaki regional plan, the draft or proposed National Policy Statement I think, and the Resource Management Act. You might like to add something to that about the mauri.

MRS MACTAVISH: Not really, although another thing that struck me is that it was very close to the natural laws of physics and conservation and transfer of energy. Yeah, so it seems to me to be very soundly based both in scientific and traditional wisdom. So I think it's a concept that is really, yeah, something we should be looking at a lot more closely if we're to find a better relationship with our environment.

MR MACTAVISH: Under ground water, the word "divert", there was some discussion about that there. It was because really the diversion of two thirds of a river would result, it was estimated by Meridian's consultants,

would result in the lowering of the water table across the flood plain of about half a metre, fairly consistently they expect. And that, there is a specific provision in the Waitaki plan that talks about not taking, using damming or diverting and the word “drain” would have been handy because you can see, I suspect, that none of those fits perfectly. And it’s something perhaps to think about because it seemed almost as if, because it wasn’t there, the effects weren’t going to be given due consideration.

The role of the plan in promoting certainty among local communities, the plan process involved 1200 submissions and was accepted I’d add rather reluctantly in some cases, as a contract between the regulators and the community. The first non-complying application was so large or is so large it threatens to throw the parameters of the plan wide open again.

We had quite some discussion too, particularly in the preparation of our submission, as to what “local” meant or what it should mean, particularly now that the river is so much a part of the national kind of picture and provides these out of catchment needs in terms of electricity. We argued for local, but we weren’t quite sure what it meant any longer. Our feeling was that in passing over another stretch of the river to the generator, that that was also passing a lot more than just the generation. It’s passing the management of the in-stream values and the ecology and all sorts of things. And it was another loss, really, to the local interests.

MRS MACTAVISH: Yeah. I think it’s very hard in economics for them to take into account the importance of local interests over national interests. I don’t think it fits in very well with the conventional cost-benefit analysis much. Inevitably, the local interest loses out. And in this case the applicant was wanting to take more of the local allocation, because the in-stream or river allocation must surely be a local one, for the national

interest. And there were all kinds of support documents in the way of cost-benefit analyses and so on, which actually meant that the local interest got very little look in, mostly it was, you know, providing electricity for a town the size of Christchurch or whatever versus the few local people and the value they place on the river. But the plan specifically says that it does not give weighting to national over local interests. And that seems to me to be something that needs to be worked through a little bit more. If local interests are in fact are going to be protected.

And if I could add something else there, which is not Lower Waitaki River Management Group, but I am sure they would probably agree, which is that when you have the amount of infrastructure and capital investment in the infrastructure as you do in the Waitaki catchment, when resource consents come up again, they'll almost surely be granted again to the same people; maybe modified a little bit, but the resource consents are not as negotiable as they would be for, you know, if you were an irrigator and suddenly found that the bottom had fallen out of dairy and you couldn't afford to irrigate any longer, you might not want your resource consents when they come up. So where there's actually real contestability for resource consents when they become due, then perhaps you've got something for future generations. In the Waitaki, I think there is very little for future generations. We seem to feel that we can grab all the allocations for our generation and in the space of a lifetime, we have used up and configured the whole of the Waitaki catchment nearly for hydroelectricity and I wonder about the visions of the young people of the future. There's nothing allocated for the future.

MR MACTAVISH: I think that's Lower Waitaki Lower national submission, sir. It's getting slightly personal, but I think it's fairly consistent with the general tenor of this document, which is our guiding principle.

CHAIR: There was one point I think in that analysis you have given us this morning which you haven't come to yet; which you might like to. And that is point 14. I know you've been talking about other ways, or thinking about loss of local control and you've been quite clear with what you've been saying about that. But I don't think you've actually come yet to explain what the Society wants us to understand about this possibility of sale of the shares in the SOE. So I wouldn't like you to go away saying "oh gosh we meant to explain to the Board about that."

[12.25pm]

MR MACTAVISH: I'm not sure I can add very much because it's not something that the Society has discussed at any depth. It's more a general feeling that that option is there. I think I'm right in thinking that Contact Energy is private now, is that right? Yes. And with the new government it seems like it may be more possible than with the last one. So it was just something that is in the back of our minds that it's another stretch of the river that could be just - it's at least while it's an SOE you kind of feel that the government is in there somewhere, but once it's sold it seems that like you've lost it really. I wouldn't like to say more than that really. As I say, it's more a feeling than something explicit by the Society.

MRS MACTAVISH: It's an awareness.

MR MACTAVISH: Awareness. Yes.

CHAIR: Well Mr and Mrs MacTavish, thank you very much for being here to present on behalf of the Lower River Society. Thank you for your clear exposition on the points. Would you be agreeable to wait a moment or two, so you could answer if you would like to, questions my colleagues may like to ask you?

MR MACTAVISH: Certainly sir.

MRS VERNON: I'll go back to your 10 and with your permission Mr Chairman, for some of us, we don't know what's in the Waitaki plan. And you mentioned in number 10 that you found the annex useful, helpful?

MR MACTAVISH: Yes.

MRS VERNON: And I wonder if that's possible if we saw what that annex was, because I don't know.

MR MACTAVISH: Yes. I have a copy here. The plan and the annex are separate documents. But, Your Honour's probably the best first person to explain the difference. This has got, obviously the policies, it has got introductory material, it's got the policies, and the rules and some explanation. But the annex gives the reasons for adopting the planned revisions. And it really elaborates, doesn't it, on - it gives the logic to why, and so if there is any discussion about the interpretation of the policy it's really helpful to go back and, as I say, in the front of this, right at the front it says, "This is to be read as part of the plan".

And the opening paragraph, "The Board is required to include in the plan its reasons for adopting the provisions of the plan, including the policies, rules and other methods and the relevant matters it considered relating to matters raised in submissions. The Board intends this section of the plan to fulfil those duties". It starts with general topics that explain the context, which the Board is adopting, the provisions of the plan. The next section covers wider topics. The final section follows the general topics areas within the structure of the plan. The list of reports that the Board has considered is included in annex 1. It's not the bit about where it says -

MRS VERNON: It's really helpful, because you've related in fact how they work together. I was just a little bit confused about the annex within the plan, so I understand where you're coming from with that. Just one other question I have is, is the Society looking to the National Policy Statement to include the words, and I was just looking at perhaps, Objective 1, I'm not sure, but include the word "local" and the word "drain", is that where the Society is coming from with this submission? Somewhere in the NPS, it might not be exactly there, but is that what you're feeling is that they - it's possible that the NPS should be recognising, if it can, local?

MR MACTAVISH: I'm quite sure that the Society's, I mean it is a local group and a core part of its brief and battle here is to keep the local interest right up there. Yeah, particularly the in-stream qualities. The allocation plan has made a bulk allocation for irrigation, which is local and there's the in-stream value, but as I say, it always seems to be the in-stream one that gets the pressure. The other groups are very powerful. I think that an opportunity that we missed as a group really, was when Meridian put in for a non-complying application after we had been through this very rigorous and prolonged period in developing the plan and setting the parameters. The first application was then non-complying. We as an in-stream group should have gone to the irrigators and said, "Look, why don't we stand together here and say to Meridian, we want you to comply." Because I think it was that the irrigators accepted that Meridian were going to get their what they wanted. I mean, they were interested in just sustaining their reliable application and then we were left fighting for the river. But I'm sure that the irrigators, I mean you know, they have families, they live locally; they want to see a sustainable river too with part of them. They're not just economic animals, I'm sure. But we just didn't make that appeal. We just didn't think of it.

DR HARDING: Thanks very much for your submission. In relation to the National Policy Statement, do you see in any way in which the Policy Statement could address the imbalance of power, for example?

MRS MACTAVISH: I don't know whether this is National Policy Statement stuff or not, but I think it's very important that minimum flow regimes are pretty much cemented in because there isn't any body, any endowed body which will speak for in-stream values for the river. So it needs to have a stronger protection, I think, than anybody else's allocation. Because if you're going to make money out of it, you can spend money. But if you are not going to make any money out of it, then you have to actually earn money to do the protecting. So I think that the health of everything relies on the health of that river. And that should be cemented into any policy statement, I think; that there is a basic flow which keeps the river functioning and healthy. And nobody should have to defend that. That should be a given.

MR MACTAVISH: Essentially there is a core group in North Otago who have been, ever since Project Aqua in about 2003, 2002, we've been essentially trying to give the river a voice. After Aqua we felt that we needed some sort of plan. And we also started up the Society to try and give the river a voice. But that's what, you know, six, seven years, which have taken a lot of time and effort. And we have noticed people dropping off, and it's only really by the skin of our teeth, isn't it, that we've managed to hang in to essentially challenge this non-complying, to try and keep the integrity of the plan.

[12.35pm]

And so, to answer your question I don't know that there is a simple answer really. I know when I set out I thought, "Why are we doing this? Why isn't

the Ministry for the Environment doing this, you know? But Ministry for the Environment were involved, Judge Sheppard in preparing the plan and working, so you know, the locals again were doing that work. Yeah, I don't know. I know in this application Meridian said they've spent a million dollars on this appeal, defending this appeal. And we've had 40,000 from the Legal Assistance Fund, quite a lump of that going to the legal people themselves. A little bit for the experts. So the experts working, you know, sort of semi-informally for you. So you have to find people who believe in it. We had to bring more experts on because there were five appellants initially and four of them dropped off, we were the only ones left, so it left big holes in our witness line-up. So we had to raise more money. We had to raise another 25,000 just going around the community. So it's what, 65,000 against a million, you know? It's a real problem, it really is and I don't know what the answer is, to be honest.

MRS MACTAVISH: I think the answer's, if you could build it into the national - something like that into the national policy; prevention is a whole lot better than the cure.

MR MACTAVISH: Yeah, yeah. Yes. We certainly think that the Objectives and the Policies in these documents are really good, you know. And there are 1 or 2 cases where Meridian's counsel has managed to wriggle around a bit. That's why the annex was so good, because it has such a holistic and connected kind of feel about it that it's driving in the right direction.

MRS MACTAVISH: And we actually do feel very lucky that we have been through that exercise of "inventorising", as it were, the resources and the values that we have in the river, and we think it's a very valuable approach when you are considering in terms of, I think, the second Term of Reference you have is how you are going to build in the National Policy

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Statement, and I think that, as I say, we are very lucky to have a catchment plan and it is a very worthwhile exercise.

CHAIR: What this Board is involved with is, of course, a National Policy Statement which is rather a more abstract level of generality than the instrument you are wanting to have. So it would be easy for the Board to (inaudible) in listening to submissions about national policy, to be as it were rather abstract; so it's valuable to hear from the Lower Waitaki River Society, because it provides some concreteness to the sorts of issues the National Policy Statement needs to be considered. So we are very grateful to the Society to be represented by yourselves in presenting your submission this morning. Thank you very much for that.

Now I believe after lunch we are going to hear you again in your own personal submissions. And what I am interested in at the moment is what time would it be convenient to you for you to do that? It is now 20 to 1.

MR MACTAVISH: Yes.

CHAIR: And we have perhaps the expectation if it suited you that at 10 to 2, we might hear from you in support of your own personal submission. Would that suit you, or would some adjustment to the time suit you better?

MR MACTAVISH: That would be fine. Thank you very much.

CHAIR: Ten to 2? Thank you.

ADJOURNED

[12.40pm]

Audio file: dpm 0099

RESUMED [1.59pm]

CHAIR: That's very helpful, thank you very much.

MR MACTAVISH: I thought it might be taken as rather presumptuous actually, Sir.

CHAIR: No, this is what we hope the submitters would do, show us what amendments they have to provide us. So, thank you. We'd like to give you the opportunity now to speak about it.

MR MACTAVISH: Thank you. Sir, I will refer to the document that I've done the track changes on but you should have another copy, a single page, which shows specific recommendations and implementations as well.

CHAIR: Yes.

MR MACTAVISH: So, I propose, Sir, just to go through quickly and pick out just a few key points in the original document and then to go to the second one I've just provided today. So, my first submission is that the word 'resource' which is actually - it's footnote number one and I would submit that in the second paragraph of the Proposed National Policy Statement, it talks about water essential to the social, economic, cultural etc, wellbeing, it mentions words like, biodiversity, natural heritage, iconic, intrinsic values, quality etc. And I think that these objectives require that freshwater be seen as more than just a resource, is my submission. That for the layperson, resource is very much bound up with something one can make money out of it.

And I think that the starting position should be that freshwater has an intrinsic value in place naturally, that should be taken into account as well. I entertain myself trying to work out when the freshwater is a resource and when it is not a resource and I've come to the conclusion that it's pretty much a matter of perception rather than any change in the material. So that's point number one.

Second point is, I think I've actually highlighted it, it's in the fourth paragraph and it's the word, 'balancing'. And I've come to have a particular aversion for it because I think it's got us into trouble. And I think it's more an LGA approach than a RMA approach, with respect, so that my layman's interpretation anyway, that that hierarchy idea is built into that enabling, sustaining idea in the RMA and I would like to see it very clearly stated in the statement that that hierarchy is acknowledged and the primacy of sustaining ecosystems is acknowledged.

[2pm]

Point Number Three, is on the second page and it's the second bullet point that says address the effects of existing and future discharges of containments to freshwater systems. And I have just noted here that I think discharges, and I'm not sure whether this is intended or not, but I think it should be explicit that it includes both direct and indirect discharges, in terms of effect.

CHAIR: Just pause for a moment please. Thank you.

MR MACTAVISH: The fourth point is, and I've already hinted at it I think, is in the third bullet there, I've added in the word presence as well as use. And that again, is acknowledgement that there is value in simply it being.

The next point is regarding the purpose of the plan, the statement on what is my page three. And I suspect that the purpose statement is very important. I know, for instance, that Lower Waitaki River Management Group has a vision and I know it's the vision that holds us together. And I've read that purpose several times and I suspect that it's a little bit hampered in that it will constrain because it needs to fit under Part 2 of the RMA. Because I would like to see the statement much clearer and sort of looking to strengthen environmental bottom lines that are nonnegotiable. But I'm not sure, Sir, to what extent you have that kind of license there. But those are just comments really, that the purpose is really important.

My next point is regarding the word 'integrated' and again, I wonder what I means sometimes and I wonder how much power it has in a document like this. And you'll notice -

CHAIR: Just help me with where are we looking at in the document?

MR MACTAVISH: You have my document, don't you, that I've -

CHAIR: Yes.

MR MACTAVISH: Well, next to Objective Two, you can see I've actually deleted the original Objective Two and it's gone out to the side in a little box.

CHAIR: Yes.

MR MACTAVISH: And it says, "To ensure effective integrated management," that little box. And the reason I deleted it was that I think it's essentially not saying much. Just worried that it's a bit of a - yeah it just hasn't got any teeth. And that's why I suggested changing it to acknowledging that

hierarchy again and achieving strong sustainability in freshwater management practice and building a hierarchy and we establish the ecological security first and then we look at uses.

I wonder whether the word 'integrated' isn't actually a method. I mean, sometimes it's a good thing to integrate and sometimes it may be appropriate to take a direct approach. So I just raise that question really.

CHAIR: Thank you.

MR MACTAVISH: Objective Three, my comment is there. I'm not clear as to why Objective Three, which is improving the quality of freshwater, is separate from Objective Five, addressing freshwater degradation.

And in Objective Four, I've got there the life supporting capacity and ecology of freshwater systems rather than ecological values. And my thought there is that, ecology is more direct and that values introduce that kind of anthropogenic approach as a way of being whittled down. I guess it's the same theme over and over, Sir, that I just think that the ecology needs to be given this primacy. And you'll see there, there's A, B, C and this is under Objective Four. And I haven't added it but I thought afterwards that D could be flow regime alteration.

Now, under Objective Seven, efficient use. And I simply comment that, I know I've cut it out here of, point B, "Avoiding excessive contamination," and I'm not sure what excessive means.

Objective Eight. The changes that I've suggested there really relate to, again, my experiences with the Lower Waitaki River Management Society where we effectively have local Tangata Whenua representation on the group. So, it's an integrated group and I think it works really well. So, I

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was hoping to broaden it, the idea of involving local groups and local communities as much as possible in the management of their own rivers. That stems from the belief that if the locals are involved there's more chance of being successful in sustaining values.

I think, I actually used the example here of marine fishery, that I live in Maraki (ph) and when the locals were fishing there and had their own quota and were fishing out of Maraki (ph) they looked after the resource. Now, that the quota system has come in and outsiders have quota they tend to whip in and if there's cod somewhere they'll just clean it out. If they don't get it, the next guy will get it, so they go for it. There's no sense of husbandry sustaining the basic resource. So, I'm just transferring that basic idea of keeping the locals involved as much as possible and promoting it.

My next point is in Objective Nine, where I've suggested that there be a levy on the commercial use of freshwater in order to self fund the monitoring and mitigate environmental impacts.

CHAIR: Do you think we can do that in a National Policy Statement?

MR MACTAVISH: To be honest Sir, I'm not clear what you can do in this regard. But I simply raise it in the hope that you'll consider it.

CHAIR: Forgive me I'm not meaning to be, sort of, correcting your spelling.

MR MACTAVISH: Yes?

CHAIR: But there's two words that sound the same, levee and levy. One is like a stop bank and one is like a tax.

MR MACTAVISH: Yes, well I mean a tax.

CHAIR: You mean the tax, because I think that we might spell that with a 'y' rather than the 'ee'.

[2.10pm]

MR MACTAVISH: Yes, yes that's quite right. Now, I did this in rather a hurry as you'll see and as I read this, there's some of these sentences and things aren't finished and I didn't really get onto the Regional Policy Statement. So, I think I'll stop there, if that's all right, on that document and just talk to this other document.

CHAIR: Now come to this other document.

MR MACTAVISH: Yes.

CHAIR: Thank you very much.

MR MACTAVISH: Now, I would like to again refer to the Lower Waitaki as an example here because many of these suggestions come out of this recent experience with it. And I would like to just explain a little bit more about what's gone on there in the last two or three years just as background before I go through these points. And perhaps the best place to start is to say that the valley itself is a wide open floodplain with some older formations on the side and then some mountains. And the floodplain is essentially built on recent gravels so you have anything from two metres and some places up to 60 metres of recent gravels right across the plain and it's largely flat although there may actually be a slight out slope from the river to the sides in places. And being made up of recent gravels it's highly permeable to the point where one of the Meridian ground water

experts said that from a management perspective you can more or less consider the water in the recent gravels and the river as the same thing.

So what has happened is that I think even since you were here Sir, preparing that plan, there's been a massive increase up the valley of dairy intensification. And the dairy boom has meant that the land value next to the river is high and there was quite a lot of kind of buffer zone that wasn't really used either side of the braided river. And increasingly the farms have crept towards the river.

What Meridian has done is it actually brought some of the properties as part of the Project Aqua in order to build canals it brought farms up and down the valley. And so it has farms and its developing them for dairying they say what do they call it, run off support, dairy support is what they call it at the moment. But I don't think there's any reason why they couldn't be fully converted to dairy with the addition of a shed at any time. So some of these properties are on the low permeable floodplain and water goes straight through and into the aqua system and then feeds into the base flow of the river. So you've got these properties being converted into more intensive agriculture and you've got encroachment going on, on this plain.

They have adopted best management practice on these farms such as lots of centre pivots and the idea is with centre pivots you simply apply small amounts of water more regularly and just top up the soil moisture constantly. And they are fencing off the wetlands and backwaters and so forth on their properties five metres from any water course. They are budgeting fertiliser applications but the effectiveness of best management practice is still uncertain according to one of the Meridian experts who spoke at the hearing. The jury's still out on it, essentially.

CHAIR: And if you'll forgive me interrupting, when you now say the hearing, you're thinking of the hearing of the North Bank Tunnel project are you?

MR MACTAVISH: That's right yes.

CHAIR: And is that the primary hearing or the appeal?

MR MACTAVISH: The appeal. That may well have come up in the primary to some extent but one of the Meridian farms which they're using as an example is called Francis farm came up with discussion in the hearing and we talked about these best management practices and effectiveness.

This particular expert under cross examination admitted that the location of these dairy blocks on the floodplain on this highly permeable area that shallow soils was going to be very demanding of best management practices anyway, irrespective of the other issues with them. So these ideas follow really from that situation the other things perhaps to add is that they same appeal hearing, ECan, their lawyer presented that a short submission where she talked about their inability at the moment to control land use. The only way they could control it is through I think discharge or a tank but essentially if those aren't involved the farmers can creep right down onto the floodplain.

The other thing of course is that if the North Bank Tunnel goes ahead and the river is reduced by two thirds that it will narrow down and there will be more control over it and there's a certain sense of anticipation I suspect by the farmers to creep in further. And with regard to the water quality at the moment, I think I told you in the submission this morning that from time to time we are getting microbiological counts in certain locations already that make it unsuitable for swimming. And the nutrients still low but increasing so essentially it's potentially under risk and if two thirds again of the water is taken out of the river that that will reduce the dilution capacity by 2.6 times so that was one of the discussion points that came up.

So that's the background to these points any way so I'll go through these points and they're pretty direct because I think that we need to be really

strong about what we do now. We've got the deteriorating environment and it's horrifyingly fast in the lower Waitaki. And we need to make some really strong statements and hopefully what you're working on will provide those. So on water quality and my suggestion are that we prohibit direct discharge of effluent to rivers.

The second one is resource consents for use of freshwater for dilution and transportation of waste will no longer be granted and not renewed after 2020. And what I'm thinking about there is that essentially I feel we abuse freshwater and that we use it for that kind of purpose, I'm thinking of sewerage schemes and so forth. That we put waste into we transport it a distance and then we spend a fortune taking the waste and contaminants out before we discharge it. And it seems to me and it has for many years as a water resources engineer to be a ridiculous thing to do and I'm wondering whether the statement couldn't provide some guidance on that. And actually get us to start looking at bio-digesters and composting loo's and reusing nutrient and other ways of dealing with waste which are much more sustainable and have much lower impact on our environment and try and draw resources out of our waste rather than just treat it as something to get rid of as quickly as possible.

The third one is formally identifying, and again this comes back to this reason I explained the plain in the lower Waitaki. Formally identify the vulnerability of different surface and ground water bodies to non-point source contaminants and zone according to land use. So going back to that lower Waitaki example I asked the ground water expert for Meridian how he would classify the aquifer underneath the river - "The young gravel aquifer on a range between one to five." I said, and he said, "Eight, in terms of vulnerability." I think he thought I said one to ten. But then I said, "And what would make it less vulnerable?" And he said, "Well, deeper soils." And I already told him that there were areas where there's just gravels exposed. So in a situation like that you would classify that as

unsuitable for certain types of intensive land use and I'm a bit worried we've lost the horses bolted in the lower Waitaki but that's how we could have avoided it I think.

[2.20pm]

And then this is another left field idea, "Set quota for nutrient load for individual catchments and subcatchments based on target maximum permissible concentrations to retain a healthy ecology and amenity value." So the idea is there that you don't only get a resource consent to take and to discharge liquid but you also have some sort of link in to the right to discharge nutrient. And then that can be linked into - yes so a resource consent, that's five, that's what I've just mentioned. So that you're classifying each catchment or subcatchment according to its capacity and or nutrient and then you're allocating the nutrient quota within that catchment to individuals to comply with.

Number six require manage -

CHAIR: Sorry I just want to ask a question around that point particularly before you go on to the next one. You're not suggesting that the NPS would set the quota you're suggesting that it would have a policy but Regional Councils would set quotas, is that what you're saying?

MR MACTAVISH: I would think so and give guidelines to the approach or method or something that would create a consistency between regions would presumably be - I mean, that's what the statement is about really, isn't it, creating consistency between regions and between policies?

CHAIR: Do you think that the policy statement should allow for different regions to have different quota's, perhaps even different catchments?

MR MACTAVISH: To have different quota?

CHAIR: Yes but for nutrient.

MR MACTAVISH: I think so because in highly vulnerable areas, for instance, the Canterbury Plains might be an area which you couldn't sustain the nutrient load where you might in Central Otago or on the down lands or somewhere where there's no direct aquifer connection.

CHAIR: My apologies for interrupting I just wanted to be sure I hadn't misunderstood. I think you've come to point six.

MR MACTAVISH: Yes. "Require managed riparian buffer zones adjacent to all freshwater systems adjacent to agriculture according to a timeframe."

CHAIR: What timeframe?

MR MACTAVISH: Tight one, Sir.

CHAIR: Any time anybody starts to talk about a tight timeframe other people come and say it can't be done.

MR MACTAVISH: Yes well I do make a comment I think to that effect in here, I think its footnote eight, which essentially I see the I see it as a privilege to be able to use water in New Zealand for commercial use and commercial gain and that comes with certain responsibilities. And I really don't think in most cases fencing off importance sense of riparian zones is an enormous ask.

MRS VERNON: Footnote seven, (inaudible) what's your date there?

MR MACTAVISH: I beg your pardon?

MRS VERNON: What's your date in footnote seven?

MR MACTAVISH: Yes, yes I have 2015 and then finally 2020.

CHAIR: Thank you.

MR MACTAVISH: Of course it raises the question of when is a water course no longer a water course, I guess there has to be some sort of definition.

Moving on to water quantity then, establish as a priority environmental flow regimes that sustain river form and ecological function for all river catchments and make non-complying applications prohibited. Yes, we touched on that this morning.

Number eight, in developing environmental flow regimes sustain sufficient energy and natural flow variability for the ecosystem function and avoid the need to substitute that with excessive and ongoing human intervention with machine and chemicals.

Nine, develop environmental flow regimes and manage freshwater systems for diversity rather than productivity. Again, this was a point that came up during the appeal, is that in a fairly simplistic level you can manage we have the option to manage the lower Waitaki for diversity or for productivity. And with the reduction of two thirds of the river Meridian, if you like, their mitigation is to increase the productivity of the river and one of the scientists put it that essentially you could increase productivity of a river by dumping effluent in it. So with flat lining the river pretty much for much of the year and at one third the size the assertion by the salmonoid experts was that they could actually increase productivity. I'm not sure whether it's per unit or whether it's total but the argument was that they could actually increase productivity. And this was meant to - everyone thinks more productive's better so this is meant to essentially say we're going to make a better river.

And it was only half way through this sort of argument came up and I realised it's really important it's a really important distinction because I think the variable flow regime and, in some way, mimicking the original flow variability, certainly in key flows, is what our natural flora and fauna is more adapted to and maybe the introduced species prefer a different,

you'll know about this Dr Harding, I'm sure. Prefer a steadier another regime which is new - well, its for an introduced species essentially. Provided the rivers are big enough then maybe both can cohabit but if we get them too small then we've got an issue. And if I could draw an analogy with land use is that when we first came here we came to a diverse ecology and we cleared it and we started to develop intensive agricultural systems which are ecologically much simpler basically sort of monocultures like dairying and sheep and deer. And I'm just wondering if that's not a good comparison with what we might end up doing with rivers, is we go for productivity but at the expense of diversity, if you see the parallel.

[2.30pm]

Number ten requires surface and groundwater connectedness to be retained in developing environmental flow regimes and I don't think connectedness is in the statement, Your Honour, I don't see it there but I thought it was a really good concept.

Finally, need to make this statement more than a host of platitudes that will add little to most existing Regional Policy Statements and plans and has so many holes in it that it has no teeth. So I realise that you're working at a high level and you can't maybe be as specific as you'd like to be but I'd really like this to make a difference, this plan. I think we have to ask ourselves at the end of the day what is it going to say that is different, what is it going to say that is going to make a difference and if you can say it does, well, that'll would be great.

MRS VERNON: I actually don't have any questions, but I would like to sincerely thank you for your original submission. Particularly where it was most helpful all the ideas that you've got throughout that document and for the time that you've obviously taken to do that.

MR MACTAVISH: Thank you.

MRS VERNON: So I would like to thank you very much, but I actually don't have any more questions.

MR MACTAVISH: Thank you very much.

MR PRIME: I've got one thank you. I was interested in your comments on the Objective Eight and wondered if you saw a difference between 'Iwi' and 'Hapu' and the word 'Tangata Whenua'?

MR MACTAVISH: I'm sorry, between? I'm going a little deaf so -

MR PRIME: Oh, if you saw a difference between the words 'Iwi' and 'Hapu' and 'Tangata Whenua'?

MR MACTAVISH: I have to admit I'm not very well informed about cultural matters. Again, in the lower Waitaki the representation on our group, on our lower Waitaki River Management Group is from Waitaha. And they have come across to me and to others in the group as being incredibly caring and protective of the river, the kind of live in place and the ones who are on our group and I know that there - well, Meridian had an expert representing Ngai Tahu and we had an expert speaking for Waitaha and they didn't always agree. Ngai Tahu was happy that, provided the ecological values of the river was sustained with the modification, that was okay, but Waitaha were saying there was more to it than that, there's the Māori and so I don't know whether that answers your question. Maybe you're thinking more in a kind of administrative sense, are you, than -

MR PRIME: Well I guess it centred around was your suggestion here that the words 'Iwi' and 'Hapu' be deleted and you retain the words -

MR MACTAVISH: Oh I see. My intention there is - I mean, maybe that's misleading. It was all done in a great hurry. My intention is simply to be inclusive.

MR PRIME: Yes.

MR MACTAVISH: And whatever works administratively, that's what we want really.

MR PRIME: Yes that's fine. Thank you.

DR HARDING: Well thank you very much for your submission, it's very thorough. You have obviously given a number of these issues quite a bit of thought and you really highlighted quite a few things. If I can go back to your original submission, there's just a few questions I have there. Page 3 in the top paragraph you've brought up this issue of timeframes and that sort of thing where at the moment it's got by 2035 and then you were talking in Number 7, you talked about other timeframes, 2015, 2020. How realistic do you think those sort of timeframes are? Is there any, sort of, particular rationale come up in those types of numbers or are you guys simply saying, "2035 is too far so we need cut back."?

MR MACTAVISH: I've assumed that we're be talking about 2035 -

DR HARDING: That's the (inaudible)

MR MACTAVISH: I keep thinking, why is this so hard? Why does it have to take so long? I mean, if we fence off things and we really give a bit of serious thought, I would - I don't know how much time you've got here but I would love you to go and have a look at the lower Waitaki and some of the things

I mentioned. Go to the Duntroon Spring. Go and look at stock standing around in this beautiful spring. The farmer just doesn't care, he doesn't get it. And it's not hard, it's just a fence. There's so many examples of that kind of thing and I just think that we're just being too soft here. That sound a bit like it a sort of school master doesn't it. It's why I don't like that word 'integrated' sometimes.

But it's one of the things actually, I notice that you're going around consulting and so I guess you have the same problem in that you hear everyone's views and you end up sort of somewhere in the middle, sort of not really changing much and we had this Lower Waitaki River Management Group that had irrigators, it had Meridian, it had local farmers adjacent to the river, it had environmentalists, it had everyone on it, and we all had our say and the only reason we came out with that document that I gave you this morning that had any bite at all was that the river wasn't under pressure, but the moment the river's come under pressure, the farmers have left our group because the wallet, I guess, counted more in the end. And I just think we have to grow up. We have to get real. They have this privilege, like when we're talking about irrigators or generators or any commercial user, has this privilege, for the right of that privilege surely it's not too much to ask them to do it and do it quickly. I mean, they are able to buy a centre pivot and put in umpteen roads and sheds and all sorts of things with development, it's not that much more to put in a few fences. I don't know, I just think it to be too easy.

DR HARDING: So you also didn't, correct me if I'm wrong, on Objective Four, you suggested some slight rewording where it talks about the likes of water capacity and ecology and today you've sort of pointed out, if you like, the importance of diversity in southern (inaudible), in the Waitaki. So do you see that life supporting capacity and ecology two different things potentially?

MR MACTAVISH: If I answer quickly, no. Life supporting and ecology, I wouldn't have thought so, no. I haven't thought of them as separate.

DR HARDING: I guess I'm wondering, I mean obviously lost (inaudible) capacity of the RMA type (inaudible) and I'm not sure whether it specifically takes into account diversity as such.

[2.40pm]

MR MACTAVISH: I've got the RMA here printed out, but isn't it looking at basically safeguarding or preserving ecological systems in section 5. So I would have thought that was preserving diversity because usually we start with diverse systems, I would've taken that as read pretty much, but am I right, Sir? Safeguarding the life supporting capacity of ecosystems, that's all life supporting capacity which is diverse, I don't know, that's for lawyers isn't it?

DR HARDING: I'm not sure, maybe it is. I just thought you might have a view on it as well. And you've suggested somewhere where you weren't very happy about the integrated management idea, on Objective Two.

MR MACTAVISH: Oh right, yeah. The Objective Two, in the box next to it, yes.

DR HARDING: And so if I interpret what you've said correctly, that your main concern is this idea of what 'integrated' means or how that could be applied? I guess where I'm going with this is that one of the other things you've said is that connectiveness is an important issue that you've seen in the Waitaki and would integrated management not encompass or have the ability to encompass this idea of connectiveness that you have identified?

MR MACTAVISH: Yeah, I think it could include that idea. I guess, well my interpretation of that is it's a wee bit like looking for synergies isn't it, in a system and trying to take advantage of synergies and I think that's generally a good thing, but again it's that sort of committee feeling that I worry about in it, that everything's in there and is it going to make any difference and are interest groups going to be coming along and say, "Oh but you haven't balanced that well enough to say it's integrated," and so you don't get any change. You can't guarantee that you're going to get a certain level of protection or whatever. But I realise that it echoes to some extent, well it's in the purpose isn't it, the interrelated and integrated objectives and policies so it's right in the core there, but I didn't know whether you have the power to change the purpose as well as the objectives so I wondered whether that - you do, oh that's good.

CHAIR: So long as a submitter has asked for it.

MR MACTAVISH: Oh well I'll ask you then, please to review the purpose.

CHAIR: In the original submission.

MR MACTAVISH: Oh okay. Okay.

CHAIR: We can't go back to that now.

MR MACTAVISH: Well I guess the fact that I've mentioned it in the integrated means, it would have to be considered in relation to the purpose, but -

DR HARDING: Okay, thanks.

CHAIR: I'm also interested in your thoughts about Objective Two and one of my colleagues - and I value the fact that you've given it some thought. A moment ago you said you'd like to see the policy statement guaranteeing a certain level of protection and that's also part of the flavour of this hierarchy of criteria, speaking of an objective term.

MR MACTAVISH: Yes.

CHAIR: And I can understand particularly from the point of view of the history that you've been discussing with us today, the history of the tensions and pressures over the lower Waitaki, but even if the National Policy Statement did incorporate some kind of hierarchy criteria, making economic use subordinate to other things, I'm not sure that it's going to give you the kind of guarantee that would make life easier for you because in the end an application has to be judged by reference to whether granting it or refusing it, or for the achieves the objective or preferences is the word they use in section 5, doesn't it?

MR MACTAVISH: Yes.

CHAIR: And I don't know that you can legislate to say, always, one or another of the various competing factors has to prevail over another, even when you get a list of particular values in section 6 that are said to be of national importance, it doesn't mean to say that they are absolute values that always prevail, because sometimes there are circumstances where they don't. And the reasons why they don't are because in the mind of the decision maker on the particular case the purpose of the Act is more fully achieved by the other decision. Do you see what I mean?

MR MACTAVISH: Yes, I know.

CHAIR: It does mean that people like yourself can't ever let go. Do you know what I mean?

MR MACTAVISH: Yeah, I know. I understood that better when I came back to it yesterday and I was looking at it again and I actually read your terms of reference and I actually had a look at the sections in the Act relating to developing and I could see that you are bound by Part 2 and that ultimate question in section 5 really, aren't you. And I -

CHAIR: And so anything that we say in the National Policy Statement is it self subordinate to Part 2 and in fact it is there to serve the purpose of Part 2 and no other purpose?

MR MACTAVISH: Yes. Well, I didn't know whether you could make some statements that were actually clarified even more the relationship - took Section 5, Part 2 and made very clear how you were interpreting it for the National Policy Statement on Freshwater or whether you kind of have to stop before it and just leave it as it is, because there's a lot of discussion, isn't there, about section 5(2), even now.

CHAIR: Of course there is. But even if you put to one side, not vaguely, sort of deep philosophical discussion that doesn't necessarily get very far, you still have such a variety of circumstances for particular proposals. But the reason why each has to be looked at individually is because the whole combination of circumstances in each of these cases can't be predicted. And so you can say well this should take priority and preference, is a word that sometimes being used as well, but there'll be a circumstance where it doesn't deserve preference.

[2.50pm]

MR MACTAVISH: Yes. I'm just wondering from the other point of view whether in saying that you're going to set environmental flow regimes, ideally for each river, before it reaches that point, that the environmental flow regimes, you can't develop some sort of assessment system where we come up with an ecological basis and I think it's around that idea of retaining biodiversity and retaining a self sustaining component to water systems so we're not dependent on fossil fuels to drive bulldozers around in the lower Waitaki forever, which is a ridiculous notion to me.

CHAIR: I understand what you're saying.

MR MACTAVISH: Yes. So do you think Sir, it would be possible to start from that end, from the ecological end and build up that bottom line kind of idea and then superimpose the flow regimes to meet those requirements and then that becomes the irrevocable position?

CHAIR: Well it's when you get to the irrevocable hard limits that you want to have that I'm wondering whether that can be achieved. It's a bit like saying, well the minimum flow is inflexible, it's rigid.

MR MACTAVISH: Yes.

CHAIR: And that, to be achieved, might depend on making any infraction of it, a prohibited activity and I know there's been some development in the law over what might and might not be a prohibited activity, but decisions about that don't go into the National Policy Statement, they must be in the plans rules. Do you see what I mean?

MR MACTAVISH: Yes. I'm thinking, can the National Policy Statement couch it in terms of required outcomes though.

CHAIR: Well that's getting beyond objectives and policies isn't it. When you look at a plan, under the RMA, that's an instrument that says what the environmental outcomes are expected to be and you showed us an example this morning.

MR MACTAVISH: Yes, yes.

CHAIR: But we need to remind ourselves that we're not writing a plan -

MR MACTAVISH: So outcomes is definite.

CHAIR: We're looking at national objectives and policies that will inform regional objectives and policies that in turn will inform people preparing plans.

MR MACTAVISH: Yeah. So this preamble Sir in paragraph 2 and 3, it appears then that that's going beyond our National Policy Statement. It's really the kind of objectives that we're talking about there, or the role that freshwater plays in meeting them, it actually requires the plans at another level as well.

CHAIR: Well I think the preamble has to be read in a different light to objectives and policies.

MR MACTAVISH: Yeah, I understand.

CHAIR: I'm not quite sure what word you'd use to describe it but it's like scene setting.

MR MACTAVISH: Yes.

CHAIR: I don't know that you could hang on the preamble, the ability to set the hierarchy of criteria or considerations, but could actually (inaudible) in the way you would like it to be.

MR MACTAVISH: Yeah, I presume we're really talking within the framework of the RMA here aren't we. I'm just wondering how other countries do it really. I'd be interested to know, because I suspect places like Germany and Britain have - I mean they've been around so long they must have established good bottom lines or where they haven't, I guess, they've got degraded systems, but, yeah, I just wonder how they do it really. I mean, there must be places that avoid this continual nibbling that goes on.

CHAIR: Yes, well I certainly understand where you're coming from. That's what it looks like, incrementally eroding of what you'd hoped would be rigid and inflexible.

MR MACTAVISH: Yes.

CHAIR: And I'm understanding what you would like us to do and I'm trying to explain to you why I think - I face a problem in seeing your way that that could be done in an instrument which is an RMA instrument that has to be subordinate to the whole of that regime.

MR MACTAVISH: Yes. I wonder if the RMA isn't fatally floored in that respect.

CHAIR: Well of course you're entitled to your opinion about that, but the Board itself is a creature of the RMA and you can't deny our parentage.

MR MACTAVISH: Yes, I understand.

To be read in conjunction with
the tabled evidence/statement

CHAIR: Well Mr MacTavish, it's really been so helpful of you to have presented your submission in the clear way that you have and I share my colleagues compliments to you.

MR MACTAVISH: Thank you all very much for the opportunity.

CHAIR: Our pleasure.

ADJOURNED [2.59 pm]